

**RESOLUTION NO. 14-020**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS  
APPROVING CONDITIONAL USE PERMIT NO. UP14-0008 FOR THE  
INSTALLATION OF THREE NEW WIRELESS ANTENNAS TO BE ENCLOSED  
WITHIN A NEW PROPOSED STRUCTURE ATTACHED TO THE ROOFTOP OF AN  
EXISTING BUILDING LOCATED AT 15 WILSON WAY**

**WHEREAS**, on April 1, 2014, Alex Orner, representing Sprint C/O Cortel Inc., submitted an application for the construction of a new Sprint wireless telecommunication facility, which includes the installation three new Sprint wireless antennas to be enclosed within a proposed radome structure, mounted to the rooftop of an existing building located at 15 Wilson Way. The property is located within the Neighborhood Commercial Zoning District with a Site and Architectural Overlay (APN 022-01-011). The application is submitted pursuant to Milpitas Municipal Code Section XI-10-13.09-B (Wireless Communication Facilities); and

**WHEREAS**, Sprint C/O Cortel Inc. has provided the City a copy of its Radio Frequency Emission Compliance Report prepared by Herbert J, Stockinger of EBI Consulting dated March 19, 2014, attached as part of the agenda item and is incorporated by reference fully herein. According to the report submitted and approved by the Federal Communications Commission (FCC), the Radio Frequency (RF) Report states that at the nearest walking/working surfaces to the proposed Sprint antennas, the maximum power density is 90.5 percent of the FCC's general public limit. At the ground level, the maximum power density generated by the proposed Sprint antennas in combination with the existing other carriers antennas on-site is 11.3 percent of the FCC's general public limit. The project would operate within the FCC limits for RF emissions; and

**WHEREAS**, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under CEQA. The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities, because the project is a negligible expansion beyond the existing use. The project would also be categorically exempt under Section 15303 (New Construction or Conversion of Small Structures) since the roof top already houses other wireless telecommunication facilities and the new equipment would be placed inside an existing communications and industrial equipment enclosure area; and

**WHEREAS**, on May 14, 2014 the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

**Section 1:** The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission.

Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**Section 2:** The proposed project is exempt from further environmental review pursuant to Section 15301 of the CEQA Guidelines, Existing Facilities, because the project is a negligible expansion beyond the existing use. The project request is for the installation of three new Sprint wireless antennas to be enclosed within the new proposed radome structure to the rooftop of an existing building located at 15 Wilson Way. The proposed project also constitutes a Class 3 installation of small new equipment and facilities and is exempt pursuant to Section 15303 of the CEQA Guidelines.

**Section 3:** **Conditional Use Permit (Section XI-10-57.04(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP14-0008**

- a. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed project will not be detrimental to the property and vicinity relative to public health, safety, and general welfare in that the location, size, design, and operating characteristics of the proposed facility will not create unusual noise, traffic, or other conditions or situations that may be detrimental or incompatible with the surrounding land uses. The proposed wireless facility use at this location is suitable and would be compatible with the wireless telecommunication antennas and ancillary equipment already onsite. Further, the applicant has provided an approved RF report indicating that the RF human exposure is below the FCC limits.

Based on the Radio Frequency (RF) emissions study results for this proposed project, at the nearest walking/working surfaces to the proposed Sprint antennas, the maximum power density is 90.5 percent of the FCC's general public limit. The composite exposure level from all other carriers existing on this site combined with Sprint's proposed antennas is 91.4 percent of the FCC's general public limit (18.28 percent of the FCC's occupational limit) at the nearest walking/working surface to each antenna. At the ground level, the maximum power density generated by the proposed Sprint antennas in combination with the existing other carriers antennas on-site is 11.3 percent of the FCC's general public limit. The project would operate within the FCC limits for RF emissions. Based on the worst-case predictive modeling, there are no modeled exposures on any accessible rooftop-level walking/working surface related to Sprint's proposed equipment in the area that exceed the FCC's occupational and/or general public exposure limits at the site. It should be noted that there are other existing wireless facilities on the site. The rooftop of the site currently has three wireless antennas provided by T-Mobile and three wireless antennas provided by Sprint, for a total of six existing wireless antennas. There are two existing radomes on the site, one radome is provided by T-Mobile and the second

existing radome is provided by Sprint. With the approval of the request, there would be a total of nine wireless antennas and three radomes.

*b) The proposed use is consistent with the Milpitas General Plan, specifically:*

*Policy 2.a-I-4: Publicize the position of Milpitas as a place to carry on compatible industrial and commercial activities with special emphasis directed toward the advantages of the City's location to both industrial and commercial use*

*Policy 2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.*

The proposed wireless antennas are a conditionally permitted use on the commercial property. This use promotes and encourages commercial and industrial activities while providing Milpitas residents with improved wireless coverage and promotes personal business within the City.

*c) The proposed use is consistent with the Milpitas Zoning Ordinance:*

The proposed use conforms to the Milpitas Zoning Ordinance in that the proposed facility complies with the development standards for the Neighborhood Commercial Zoning District and requirements for Wireless Telecommunication Facilities. The project proposes no changes to the existing setbacks, Floor Area Ratio, existing landscaping, and complies with the height regulations for Wireless Communication Facilities pursuant to Section XI-10-13.09(7) of the Zoning Ordinance, which states: "there shall be no more than two antenna support structures that exceed 20 feet in height per parcel." The proposed radome structure does not exceed 20 feet in height, in addition the existing two radome structures also do not exceed 20 feet in height. The proposed wireless facility is a conditionally permitted use in the Neighborhood Commercial. The layout of the site and design of the proposed radome structure and three new antennas are compatible and aesthetically harmonious with the adjacent and surrounding land uses.

**Section 4:** The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 14-020 approving Conditional Use Permit No. UP14-0008 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on May 14, 2014.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on May 14, 2014 and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

**EXHIBIT 1****CONDITIONS OF APPROVAL  
CONDITIONAL USE PERMIT NO. UP14-0008****General Conditions**

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. UP14-0008 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
  - a. Acceptance of this Permit by Permittee; and
  - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
  - a. Completes a foundation associated with the project; or
  - b. Dedicates any land or easement as required from the zoning action; or
  - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made.

Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on May 14, 2014 in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

#### **Special Conditions**

1. Masts, towers, radomes, and antennas shall not be painted and shall be limited to gray, black, white, brown, tan, silver, gold, pale blue, dark green, or any other color compatible with surrounding structures or vegetation. **(P)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney